

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

FILED

AUG 20 2007

UNITED STATES BANKRUPTCY COURT
SAN FRANCISCO, CA

Gloria L. Franklin
Clerk of Court

San Francisco Bankruptcy Court
235 Pine St.
P.O. Box 7341
San Francisco, CA 94120-7341

(415) 268-2300

Richard W. Wieking, Clerk
United States District Court
450 Golden Gate Avenue
San Francisco, CA 94102-3489

C 07 4333

Re: Pros Rivera, Bankruptcy Case No. 05-32090 TEC7 (Chapter 7)
Ivey v. Rivera, Adversary Proceeding No.: 05-3441 TEC
Bankruptcy Judge Thomas E. Carlson

Dear Mr. Wieking:

☒ Enclosed please find a conformed copy of **Notice of Appeal, Statement of Election to District Court, Court Certificate of Mailing**, docket report and the order being appealed for assignment to a district court judge.

☐ Enclosed please find a certified copy of the docket and order being appealed and related papers from BAP and designated items to form the record on appeal for assignment to a district court judge.

☐ Enclosed please find the record of designated items and a certificate of record for an appeal that has been previously sent to the district court.

☐ Enclosed please find a Bankruptcy Judge's Recommendation that Appeal Be Dismissed and the Notice of Appeal and associated documents filed with the Bankruptcy Court.

Please acknowledge receipt of the enclosed documents with the District Court case number on the copy of this letter and return it to U.S. Bankruptcy Court, San Francisco Division.

GLORIA L. FRANKLIN, Clerk
United States Bankruptcy Court

Dated: 08/20/2007

By: Quan Lu
Deputy Clerk

FILED

AUG 22 2007

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PJH

2

07-4333 PJH

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

FILED

AUG 20 2007

UNITED STATES BANKRUPTCY COURT
SAN FRANCISCO, CA

In re

Pros Rivera

Debtor

Bankruptcy Case No.

05-32090 TEC7

Chapter 7

Cherie Ivey

Plaintiff

v.

Adversary Proceeding No.:

05-3441 TEC

Pros Rivera

Defendant

COURT CERTIFICATE OF MAILING

I, the undersigned, a regularly appointed and qualified clerk in the office of the Bankruptcy Judge of the United States Bankruptcy Court from the Northern district of California, at San Francisco do hereby certify:

That I, in the performance of my duties as such clerk, served a copy of **Notice of Appeal, Statement of Election to District Court** and **Proof of Service** by depositing it in the regular mail at San Francisco, California, on the date shown below, in a sealed envelope, addresses as listed below:

United States Trustee
235 Pine St. #700
San Francisco, CA 94104

United States District Court
450 Golden Gate Avenue
P. O. Box 36060
San Francisco, CA 94102-3489

Chris D. Kuhner
Kornfield, Paul and Nyberg
1999 Harrison St. #2675
Oakland, CA 94612

Date: August 20, 2007

Deputy Clerk : Quan Lu

PreAct, 727OBJ, APPEAL

**U.S. Bankruptcy Court
Northern District of California (San Francisco)
Adversary Proceeding #: 05-03441
Internal Use Only**

Assigned to: Judge Thomas E. Carlson
Related BK Case: 05-32090
Related BK Title: Pros Rivera
Related BK Chapter: 7
Demand: \$325000
Nature[s] of Suit: 424 Obj/Revocation Discharge 727

Date Filed: 10/11/05

UNITED STATES BANKRUPTCY COURT
Northern District of California
I certify that this is a true, correct and full copy
of the original document on file in my custody.
Dated August 20, 2007
by Quana Lee
Deputy Clerk

Plaintiff

Cherie Ivey

represented by **Willie E. Phillips**
Law Offices of Willie E. Phillips
484 Lake Park Ave. #335
Oakland, CA 94610
(510) 451-2222
Email: WEPhillipsEsq@netscape.com
LEAD ATTORNEY



V.

Defendant

Pros Rivera

represented by **Chris D. Kuhner**
Kornfield, Paul and Nyberg
1999 Harrison St. #2675
Oakland, CA 94612
(510) 763-1000
Email: c.kuhner@kornfieldlaw.com

| Filing Date | # | Docket Text |
|-------------|----------|---|
| 10/11/2005 | <u>1</u> | 424 (Obj/Revocation Discharge 727): Complaint by Cherie Ivey against Pros Rivera. Fee Amount \$250. (lp,) Additional attachment(s) added on 10/15/2005 (ql,). (Entered: 10/11/2005) |
| 10/11/2005 | | Receipt of Adversary Filing Fee. Amount 250.00 from Willie E. Phillips. Receipt Number 30038996. (lp) (Entered: 10/11/2005) |
| 10/11/2005 | <u>3</u> | Summons Issued on Pros Rivera Answer Due 11/10/2005. Status Conference to be held on 12/15/2005 at 10:00 AM at San Francisco Courtroom 23 - Carlson. (ql,) (Entered: 10/15/2005) |
| 10/15/2005 | <u>2</u> | Order Regarding Initial Disclosures and Discovery Conference . (ql,) (Entered: 10/15/2005) |
| 12/15/2005 | <u>3</u> | Hearing Continued (RE: related document(s) <u>3</u> Summons Issued). Status Conference to be held on 2/23/2006 at 10:00 AM San Francisco Courtroom 23 - Carlson for <u>3</u> , (gh,) (Entered: 12/15/2005) |

02/23/2006 3 Hearing Continued (RE: related document(s) 3 Summons Issued). Status Conference to be held on 4/27/2006 at 10:00 AM San Francisco Courtroom 23 - Carlson for 3, (gh,) (Entered: 02/27/2006)

04/27/2006 3 Hearing Continued (RE: related document(s) 3 Summons Issued). Status Conference to be held on 6/22/2006 at 10:00 AM San Francisco Courtroom 23 - Carlson for 3, (gh,) (Entered: 04/27/2006)

05/05/2006 4 First Amended Answer to Complaint Filed by Pros Rivera. (Kuhner, Chris) (Entered: 05/05/2006)

06/22/2006 3 Hearing Continued (RE: related document(s) 3 Summons Issued). Status Conference to be held on 8/17/2006 at 10:00 AM San Francisco Courtroom 23 - Carlson for 3, (gh,) Modified on 8/8/2006 (gh,). (Entered: 06/22/2006)

08/17/2006 3 Hearing Continued (RE: related document(s) 3 Summons Issued). Status Conference to be held on 2/16/2007 at 9:30 AM San Francisco Courtroom 23 - Carlson for 3, (gh,) (Entered: 08/18/2006)

08/18/2006 5 Order Continuing Status Conference . Status Conference to be held on 2/16/2007 at 09:30 AM at San Francisco Courtroom 23 - Carlson. (ql,) (Entered: 08/18/2006)

02/16/2007 3 Courtroom Hearing Held (RE: Summons Issued - related document(s) 3) (Trial is set for 6/26/07 at 9:30 AM, Discovery cutoff is 5/25/07.)(gh,) (Entered: 02/16/2007)

02/23/2007 6 Scheduling Order . Discovery due by 5/25/2007. Trial date set for 6/26/2007 at 09:30 AM at San Francisco Courtroom 23 - Carlson. (ql,) (Entered: 02/23/2007)

02/25/2007 7 BNC Certificate of Mailing - Electronic Order (RE: related document(s) 6 Scheduling Order). Service Date 02/25/2007. (Admin.) (Entered: 02/25/2007)

06/19/2007 8 Trial Brief . Filed by Defendant Pros Rivera (Kuhner, Chris) (Entered: 06/19/2007)

06/19/2007 9 Witness List . Filed by Defendant Pros Rivera (Kuhner, Chris) (Entered: 06/19/2007)

06/19/2007 10 Trial Brief on Facts and Law (RE: related document(s) 1 Complaint). Filed by Plaintiff Cherie Ivey (ql,) (Entered: 06/22/2007)

06/19/2007 11 Witness List . Filed by Plaintiff Cherie Ivey (ql,) (Entered: 06/22/2007)

06/19/2007 12 List of Exhibits In the Case Of Cherie Ivey v. Pros Rivera, Bankruptcy Case No. 05-32090 TEC, Northern District California (San Francisco) (RE: related document(s) 10 Trial Brief). Filed by Plaintiff Cherie Ivey (Attachments: # 1 Exh 1-3# 2 Exh 4# 3 Exh 5-11# 4 Exh 12-16# 5 Exh 17# 6 Exh 18# 7 Exh 19# 8 Exh 20# 9 Exh 21-22# 10 Exh 23-27# 11 Exh 28-29) (ql,) (Entered: 06/22/2007)

06/19/2007 13 Statement Designating Excerpts From Deposition To Be Used At Trial. (RE: related document(s) 10 Trial Brief). Filed by Plaintiff Cherie Ivey (Attachments: # 1 Deposition of Pros Rivera-1 of 4# 2 Deposition of Pros Rivera-2 of 4# 3 Deposition of Pros Rivera-3 of 4# 4 Deposition of Pros Rivera-4 of 4) (ql,) (Entered: 06/22/2007)

06/22/2007 14 Certificate of Service (RE: related document(s) 12 Exhibit, 11 Witness List, 10 Trial Brief, 13 Statement). Filed by Plaintiff Cherie Ivey (ql,) (Entered: 06/22/2007)

06/22/2007 15 Declaration of Willie E. Phillips To Correct Clerical Error In Filed Documents and Explaining Why One Declaration Was Not Filed. (RE: related document(s) 12 Exhibit, 11 Witness List). Filed by Plaintiff Cherie Ivey (ql,) (Entered: 06/22/2007)

06/22/2007 16 Amended List of Exhibits In the Case Of Cherie Ivey v. Pros Rivera, Bankruptcy Case No. 05-32090 TEC, Northern District California (San Francisco) (RE: related document(s)12 Exhibit). Filed by Plaintiff Cherie Ivey (ql,) (Entered: 06/22/2007)

06/22/2007 17 Amended Witness List . Filed by Plaintiff Cherie Ivey (ql,) (Entered: 06/22/2007)

06/22/2007 18 Statement Designating Excerpts From Deposition To Be Used At Trial To Support Non-Dischargeability of Money Owed To Creditor Cherie Ivey. (RE: related document(s)13 Statement). Filed by Plaintiff Cherie Ivey (ql,) (Entered: 06/22/2007)

06/22/2007 19 Certificate of Service (RE: related document(s)15 Declaration, 16 Exhibit, 17 Witness List, 18 Statement). Filed by Plaintiff Cherie Ivey (ql,) (Entered: 06/22/2007)

06/27/2007 Courtroom Hearing Held (RE: Scheduling Order - related document(s) 6) (Judgement for defendant, court to do judgement.)(gh,) (Entered: 06/27/2007)

08/07/2007 20 Judgment After Trial . (ql,) (Entered: 08/07/2007)

08/17/2007 21 Notice of Appeal to District Court , Fee Amount \$ 255. (RE: related document(s)20 Judgment). Appellant Designation due by 8/27/2007. Transmission to District Court due by 9/17/2007. Filed by Plaintiff Cherie Ivey (ql,) (Entered: 08/20/2007)

08/17/2007 22 Statement of Election to District Court, (RE: related document(s)21 Notice of Appeal filed by Plaintiff Cherie Ivey). Filed by Plaintiff Cherie Ivey (ql,) (Entered: 08/20/2007)

08/17/2007 23 Certificate of Service (RE: related document(s)22 Statement of Election on Appeal, 21 Notice of Appeal). Filed by Plaintiff Cherie Ivey (ql,) (Entered: 08/20/2007)

08/20/2007 24 Courts Certificate of Mailing. Number of notices mailed: 3 (RE: related document(s)21 Notice of Appeal, 22 Statement of Election on Appeal, 23 Certificate of Service). (ql,) (Entered: 08/20/2007)

08/20/2007 25 Transmittal of Appeal to District Court (RE: related document(s)21 Notice of Appeal filed by Plaintiff Cherie Ivey). (ql,) (Entered: 08/20/2007)

FILED

AUG 17 2007

UNITED STATES BANKRUPTCY COURT
SAN FRANCISCO, CA

Willie E. Phillips, #56009
LAW OFFICE OF WILLIE E. PHILLIPS
484 Lake Park Avenue, #335
Oakland, CA 94610

Tel: (510) 451-2222
Fax: (510) 451-2235

Attorney for Creditor/Plaintiff Cherie Ivey

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA (San Francisco)**

In Re:
PROS RIVERA,
Debtor,

**Case No.: 05-32090 TEC
CHAPTER 11**

CHERIE IVEY,
Plaintiff,

**Adversary Proceeding
No. 05-3441**

vs.
PROS RIVERA,
Defendant.

**NOTICE OF APPEAL TO THE COURT
OF APPEALS FROM A JUDGMENT OF A
BANKRUPTCY JUDGE ENTERED IN AN
ADVERSARY PROCEEDING**

**NOTICE OF APPEAL TO THE UNITED STATES DISTRICT COURT OF APPEALS
UNDER 28. U.S.C. 158(a)**

The Plaintiff Cherie Ivey appeals to the United States Court of Appeals for the Ninth Circuit under 29 U.S.C. 158 (a) from a Final Judgment of the Bankruptcy Judge Thomas E. Carlson Entered in this Adversary Proceeding on July 7, 2007. The Adversary Proceeding was a Trial on the Plaintiff's Complaint for Non-Dischargeability of the Debtor/Defendant Pros Rivera based on a Fraudulent Deed and other fraudulent documents used to obtain a few hundred thousand dollars from the Plaintiff and the Bankruptcy Court Judges ruling in favor of the Defendant. The Adversary Proceeding No. 05-3441 is the proceeding from which this

1 Appeal arises and relates to Bankruptcy Case No. 05-32090 TEC under the Chapter 7 filed by
2 the Debtor Pros Rivera.

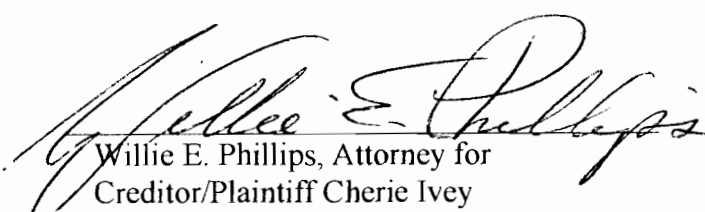
3 The names of all the Parties to the Judgment appealed from and the names and
4 addresses of their respective attorneys are as follows:

5
6 Willie E. Phillips,
7 Attorney for the Creditor/Plaintiff
8 Cherie Ivey
9 484 Lake Park Avenue, #335
Oakland, CA 94610
Telephone No.: (510) 451-2222

Chris d. Kuhner
Kornfield, Paul & Nyberg, P.C.
Attorney for the Debtor/Defendant
Pros Rivera
1999 Harrison Street, Suite 2675
Oakland, CA 94612
Telephone No.: (510) 763-1060

10
11 The undersigned Attorney for the Plaintiff mentioned above certifies that the Plaintiff
12 seeks prosecution of this Appeal directly to the United States Court of Appeals for the Ninth
13 Circuit under 28 U.S.C. 158 (c). A Separate Statement of Election to have this heard by the
14 United States District Court is being filed.
15

16 Dated: August 17, 2007
17

18
19 
20 Willie E. Phillips, Attorney for
21 Creditor/Plaintiff Cherie Ivey
22 484 Lake Park Avenue, #335
23 Oakland, California 94610
24 Telephone No.: 510-451-2222
25
26
27
28
29
30

FILED

AUG 17 2007

UNITED STATES BANKRUPTCY COURT
SAN FRANCISCO, CA

Willie E. Phillips, #56009
LAW OFFICE OF WILLIE E. PHILLIPS
484 Lake Park Avenue, #335
Oakland, CA 94610

Tel: (510) 451-2222
Fax: (510) 451-2235

Attorney for Creditor/Plaintiff Cherie Ivey

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA (San Francisco)

In Re:
PROS RIVERA,
Debtor,

CHERIE IVEY,
Plaintiff,

vs.
PROS RIVERA,
Defendant.

Case No.: 05-32090 TEC
CHAPTER 11

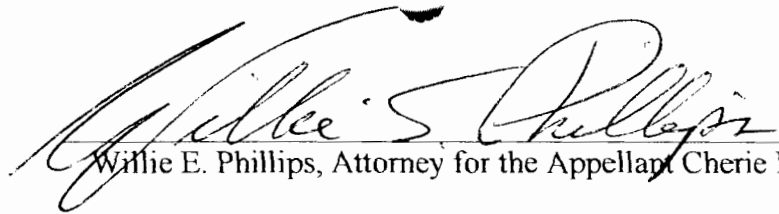
Adversary Proceeding
No. 05-3441

SEPARATE STATEMENT OF ELECTION
AT THE TIME OF FILING THE NOTICE
OF APPEAL UNDER 28 U.S.C. 158 (c)(1)
TO HAVE THE DISTRICT COURT OF
APPEAL 28 U.S.C. 158 (c)(1)

SEPARATE STATEMENT OF ELECTION UNDER 28 U.S.C. 158 (c) (1)

I Willie E. Phillips, Attorney for and in behalf of the Appellant/Creditor/Plaintiff Cherie Ivey, hereby declare that we Elect under 28 U.S.C. 158 (c) (1) to have this Appeal of the Judgment Entered on July 7, 2007 in Adversary No. 05-3441, which arises out of the Chapter 7 case of the Debtor Pros Rivera under Bankruptcy Case No. 05-32090 TEC, to be heard by the United States Court of Appeals for the Ninth Circuit.

I declare under penalty of perjury that the foregoing is true and correct and that this Separate Statement of Election was executed this 17th day of August, 2007 at Oakland, California


Willie E. Phillips, Attorney for the Appellant Cherie Ivey

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

FILED

AUG 17 2007

UNITED STATES BANKRUPTCY COURT
SAN FRANCISCO, CA

Willie E. Phillips, #56009
LAW OFFICE OF WILLIE E. PHILLIPS
484 Lake Park Avenue, #335
Oakland, CA 94610

Tel: (510) 451-2222
Fax: (510) 451-2235

Attorney for Creditor Cherie Ivey

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA (San Francisco)**

In Re:

PROS RIVERA,

Debtor,

CHERIE IVEY,

Plaintiff,

vs.

PROS RIVERA,

Defendant.

**Case No.: 05-32090 TEC
CHAPTER 7**

**Adversary Proceeding
No. 05-3441**

PROOF OF SERVICE

PROOF OF SERVICE

I am a citizen of the United States, over the age of 18 years, and not a party to the within action. I am employed in the County of Alameda, State of California and my business address is 484 Lake Park Avenue, #335, Oakland, California 94610.

On August 17, 2007 I served the following:

- **Notice Of Appeal To The Court Of Appeals From A Judgment Of A Bankruptcy Judge Entered In An Adversary Proceeding**
- **Separate Statement Of Election At The Time Of Filing The Notice Of Appeal Under 28 U.S.C. 158 (C)(1) To Have The District Court Of Appeal 28 U.S.C. 158 (C)(1)**

1 on the interested parties in this action by placing true and correct copies thereof, enclosed in envelope(s)
2 addressed as follows:

3
4 Chris D. Kuhner, Esq.
KORNFELD, PAUL & NYBERG, P.C.
5 1999 Harrison Street, Suite 2675
Oakland, California 94612
6 Fax: (510) 273-8669
7

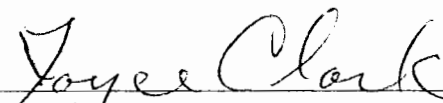
8 ☐ **BY U.S. MAIL:** I know that the documents(s) described above was deposited with the
9 United States Postal Service on the same day this declaration was executed in the ordinary
10 course of business. I know that the envelope(s) containing said documents(s) was sealed and,
11 with postage thereon fully prepaid, placed for collection and mailing on the date, following
12 ordinary business practices, in the United States mail at Oakland, California.

13 ☒ **BY FAX:** I caused a true copy thereof to be transmitted via an electronic facsimile machine
14 between the hours of 8:30 a.m. and 5:30 p.m.

15 ☐ **BY PERSONAL SERVICE:** I caused such envelopes(s) to be hand delivered to the above
16 address(es).

17
18 ☐ **BY OVERNIGHT DELIVERY:** I caused such envelope(s) to be delivered to the above
19 addressee within 24 hours by overnight delivery service.

20 I declare under penalty of perjury under the laws of the State of California that the foregoing is
21 true and correct.
22

23
24 
25 Joyce Clark
26
27
28
29
30

Entered on Docket
August 07, 2007
GLORIA L. FRANKLIN, CLERK
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA



Signed and Filed: August 07, 2007


THOMAS E. CARLSON
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re

PROS RIVERA,

Debtor.

CHERIE IVEY,

Plaintiff,

vs.

PROS RIVERA,

Defendant.

) Case No. 05-32090 TEC

) Chapter 7

) UNITED STATES BANKRUPTCY COURT
) Northern District of California

) I certify that this is a true, correct and full copy
) of the original document on file in my custody.

) Dated August 20, 2007

) by Gloria L. Franklin

) Deputy Clerk

) Adv. Proc. No. 05-3441 TC



JUDGMENT AFTER TRIAL

The above-entitled action came to trial on June 27, 2007.
Willie E. Phillips appeared for Plaintiff. Chris D. Kuhner
appeared for Defendant. Upon due consideration, and based upon the
findings of fact and conclusions of law stated orally upon the
record at the conclusion of trial, the court hereby enters the

1 following judgment.

2 (1) Judgment is rendered for Defendant. Plaintiff shall take
3 nothing on her complaint. Defendant is entitled to a discharge.
4 The debt of Defendant to Plaintiff at issue in this action is not
5 excepted from that discharge under 11 U.S.C. § 523.

6 (2) Each party shall bear his or her own attorneys fees.

7 (3) Defendant may recover taxable costs by making timely
8 application under Civil Local Rule 54-1.

9 ****END OF JUDGMENT****

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

Court Service List

Willie E. Phillips, Esq.
Law Offices of Willie E. Phillips
484 Lake Park Avenue, Suite 445
Oakland, CA 94610

Chris D. Kuhner, Esq.
Kornfield, Paul and Nyberg
1999 Harrison Street, Suite 2675
Oakland, CA 94612